# BOOK REVIEWS

THE CASE FOR THE SHORTER WORK DAY, by Felix Frankfurter and Josephine Goldmark. (New York: National Consumers' League, 1916, pp. xv, 1021.)

These two volumes, submitted to the Supreme Court of the United States as a brief in *Bunting* v. *Oregon,* the case involving the validity of the Oregon ten-hour law, constitute a unique and notable contribution to American constitutional jurisprudence. They are based on the assumption that the question presented in determining whether the law is a valid exercise of the police power and thus not in conflict with the Fourteenth Amendment, is, "what evils are manifest, what tendencies are disclosed, that present a reasonable field for legislative repression; what remedies are available that present a reasonable field for legislative encouragement. This field of reasonable action is the state's police power; to this sphere of statesmanship the Fourteenth Amendment offers no barriers." The Supreme Court has recognized that this is the problem and has professed itself not "reluctant to give effect to new and additional knowledge" even though it was led to take a view different from that which formerly prevailed. In this brief, therefore, the attempt is made to present facts of which the Court will take judicial notice tending to show that Oregon was exercising a reasonable judgment in passing the ten-hour law.

Part First enumerates all the measures that have been enacted in the United States regulating the hours of labor and gives a brief treatment of foreign experience. Many precedents are shown for the Oregon law. But the real strength of the brief is the second part which considers "The World's Experience upon which the Legislation Limiting the Hours of Labor is Based." The attempt is made, and successfully, to show the connection between long hours and disease—whether occupational or simply by reason of weakened vitality—accidents, fatigue with consequent inefficiency, loss of moral restraints, growth of intemperance, and general welfare. This, however, is entirely negative, and the brief goes on to show that shorter hours have good effects upon morals, general welfare and citizenship. This expedient, furthermore, is the only protection, and the economic aspects of the change justify it, in that there is a general benefit to commercial prosperity, production is increased (interesting illustrations are given), and the irregularity of employment is lessened. The literature of the world is drawn upon to prove these contentions and statistics are frequently used with great effect.

As an appendix there is reprinted Professor Frankfurter's paper on "Hours of Labor and Realism in Constitutional Law" which appeared in the HARVARD LAW REVIEW last year. This is the most recent and most authoritative study of the constitutional questions involved from the standpoint of decisions. Not the least interesting feature of the brief is the fact that the first two parts were prepared under the direction of

Mr. Louis D. Brandeis, until his nomination to the United States Supreme Court compelled him to withdraw from the case.

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A TREATISE ON THE LAW OF TELEGRAPH AND TELEPHONE COMPANIES, INCLUDING ELECTRIC LAW, by S. Walter Jones, 2d ed. (Kansas City: Vernon Law Book Co., 1916, pp. xxiv, 1065.)

The preface states that this work purposes to present to the profession "an exhaustive treatise of the law upon every point relating to telegraph and telephone companies." In view of the recent activities of forty-eight state legislatures, to say nothing of the federal Congress, the author is to be commended for his ambition. The "busy practitioner" is apt to be more critical and jealous of the word *exhaustive* than his first cousin, the "gentle reader."

The greediness of the federal courts under the interstate commerce clause and legislation relating thereto seriously affects the telegraph companies. A large percentage of their business is necessarily interstate. In *Adams Express Company* v. *Croninger,* 226 U. S. 491, the Supreme Court decided that state legislation, prohibiting reasonable classification of parcels and stipulations as to rates thereon by express companies, is ineffective as to interstate commerce, under the Carmack amendment; and the score of cases dismissed in Washington by mere reference to the Croninger decision shows that the Court was in earnest. Congress, by the Act of June 18, 1910, has expressly provided: "All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful; provided that messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages." Under this federal enactment we find two important and well reasoned cases from the state courts. *Haskell Co.* v. *Postal Tel. Co.* (Me.), 96 Atl. 219; *Boyce* v. *Western Union Tel. Co.* (Va.), 89 S. E. 106. Both opinions were in print months before Professor Jones' book went to press, yet neither is cited by him. Nor is the act of June 18, 1910, referred to in the sections on "Federal Control."

The book is divided into thirty-one chapters, those dealing with construction and maintenance and damages being particularly thorough and enlightening. The Act of Congress of June 24, 1866, and kindred legislation, is treated at length. The discussion of "Corporate Rights and Franchises" is not adequate; but local state statutes should supply the omissions. That most prolific source of litigation in recent years—the right to recover damages for mental anguish—is admirably and tersely